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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,716	04/03/2008	Ruediger Freitag	3836	9966

278 7590 06/01/2010
MICHAEL J. STRIKER
103 EAST NECK ROAD
HUNTINGTON, NY 11743

EXAMINER

GANEY, STEVEN J

ART UNIT	PAPER NUMBER
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3752

NOTIFICATION DATE	DELIVERY MODE
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06/01/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

Office Action Summary	Application No. 10/589,716	Applicant(s) FREITAG ET AL.	
	Examiner STEVEN J. GANEY	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/13/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on February 18, 2010, which has been fully considered in this action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over CN1626256.

CN1626256 discloses a fire protection system comprising a fire protection glass pane partition 21 as a first fire protection barrier; fire activated water spray system with outlet nozzles 220 on both sides of the fire protection glass pane arranged on a ceiling in front of and spaced from the glass pane, which applies a curtain-like water spray haze directly in front of the glass pane as an additional, light permeable fire protection barrier which partially wets the glass pane and extends from the ceiling to the bottom end of the fire protection glass pane and which haze has a width perpendicular to the glass pane that is within the range of 10cm to 200cm, except for the glass pane being a fire-risk category E. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a glass pane with a fire-risk category E rating since such a selection would depend on the level of fire resistance rating

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desired for the barrier fire endurance desired and as disclosed by the applicant in the specification on pages 1 and 2.

As to claim 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide droplets of less than 200 microns, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.d 272, 205 USPQ 215 (CCPA 1980). In addition, it is well known in the fire protection art that water sprays with smaller droplet sizes have higher heat absorption rates which facilitates cooling.

As to high pressure water spray outlet nozzles and claim 21, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the water spray system designed as a high-pressure water spray system with pressures from 10 to 200, since it has been held that if one skilled in the art can discover the optimum or workable ranges by routine experimentation, where the general conditions of a claim are disclosed in the prior art, the differences between the claimed invention and the prior art may not be patentably different. In re Aller, 220 F.2d 454,456 105 USPQ 233,235 (CCPA 1955).

As to claim 22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide glass panes composed of the materials claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As to claim 23, and the distance between the nozzles and the fire protection glass pane, it would have been obvious to one having ordinary skill in the art at the time the invention was

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made to have the nozzles at the claimed distance range from the glass pane since it has been held that if one skilled in the art can discover the optimum or workable ranges by routine experimentation, where the general conditions of a claim are disclosed in the prior art, the differences between the claimed invention and the prior art may not be patentably different. In *re Aller*, 220 F.2d 454,456 105 USPQ 233,235 (CCPA 1955). Note that the nozzles are located a distance α and β from the from the glass pane in figures 2 and 3 and are within the claimed range of 30-200 cm.

As to claim 26, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a glass partition in combination with a glazed door, since such arrangements are well known in the fire protection industry in order to provide a safe means of egress from one area to another.

Response to Arguments

4. Applicant's arguments, see pages 5-13, filed February 18, 2010, with respect to the rejection(s) of claim(s) 1-17 under 35 U.S.C. 103(a) as being unpatentable over Sundholm '309 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of CN1626256.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. GANEY whose telephone number is (571)272-4899. The examiner can normally be reached on 9:00-5:00; Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven J. Gancy/
Primary Examiner
Art Unit 3752

sjg